

LIN LIN, et al.,
Plaintiffs,
v.
INFINQUE JAMISON,
Defendant.

Case No. 18-cv-07216-KAW

**ORDER REASSIGNING CASE TO A
DISTRICT JUDGE; REPORT AND
RECOMMENDATION TO REMAND
TO STATE COURT; ORDER
GRANTING IN FORMA PAUPERIS
APPLICATION**

Re: Dkt. Nos. 1, 2

On November 29, 2018, Defendant Infinque Jamison removed this unlawful detainer action from Contra Costa County Superior Court, and applied to proceed *in forma pauperis*. (Not. of Removal, Dkt. No. 1; IFP Appl., Dkt. No. 2.) On December 14, 2018, Plaintiffs moved to remand the case. (Dkt. No. 5.)

As removal is clearly improper, and the parties have not consented to the undersigned, for the reasons set forth below, the Court reassigns this case to a district judge and recommends that the case be remanded to state court. Additionally, the Court grants Defendant's application to proceed *in forma pauperis*.

I. BACKGROUND

Plaintiffs Lin Lin and Real Commercial Property, Inc. commenced this unlawful detainer action against Defendant in Contra Costa County Superior Court on or around October 15, 2018. (Not. of Removal at 9.) The complaint contains a single cause of action for unlawful detainer. *Id.* The case is a "limited civil case," in which Plaintiff seeks immediate possession of a certain property located in Antioch, California, which Defendant occupies.

On October 12, 2018, Plaintiff allegedly served a written notice on Defendant to pay rent or quit within three days. (Not. of Removal at 12.) On October 15, 2018, Plaintiff filed the instant

1 unlawful detainer suit in state court, and summons was issued. (Not. of Removal at 9, 11.) On
2 November 29, 2018, Defendant removed the action to federal court on the grounds that it presents
3 a federal question. (Not. of Removal at 2.)

4 **II. LEGAL STANDARD**

5 Federal courts exercise limited jurisdiction. A “federal court is presumed to lack
6 jurisdiction in a particular case unless the contrary affirmatively appears.” *Stock W., Inc. v.*
7 *Confederated Tribes*, 873 F.2d 1221, 1225 (9th Cir. 1989) (citation omitted). A defendant may
8 remove a civil action from state court to federal court if original jurisdiction would have existed at
9 the time the complaint was filed. *See* 28 U.S.C. § 1441(a). “[R]emoval statutes are strictly
10 construed against removal.” *Luther v. Countrywide Homes Loans Servicing, LP*, 533 F.3d 1031,
11 1034 (9th Cir. 2008). “Federal jurisdiction must be rejected if there is any doubt as to the right of
12 removal in the first instance,” such that courts must resolve all doubts as to removability in favor
13 of remand. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). The burden of establishing that
14 federal jurisdiction exists is on the party seeking removal. *See id.* at 566-67.

15 Federal district courts have original jurisdiction over actions that present a federal question
16 or those based on diversity jurisdiction. *See Wayne v. DHL Worldwide Express*, 294 F.3d 1179,
17 1183 & n.2 (9th Cir. 2002). Federal district courts have federal question jurisdiction over “all civil
18 actions arising under the Constitution, laws or treaties of the United States.” 28 U.S.C. § 1331.
19 Federal question jurisdiction is governed by the well-pleaded complaint rule, which provides that
20 the basis for federal jurisdiction must appear on the face of the properly pleaded complaint, either
21 because the complaint directly raises an issue of federal law or because the plaintiff’s “right to
22 relief under state law requires resolution of a substantial question of federal law in dispute
23 between the parties.” *Franchise Tax Bd. of Cal. v. Constr. Laborers Vacation Trust for S. Cal.*,
24 463 U.S. 1, 13 (1983). “[A] case may not be removed to federal court on the basis of a federal
25 defense . . . , even if the defense is anticipated in the plaintiff’s complaint” *Caterpillar Inc. v.*
26 *Williams*, 482 U.S. 386, 393 (1987) (citation omitted).

27 **III. DISCUSSION**

28 Defendant removed this unlawful detainer action from state court on the grounds that the

1 district court has jurisdiction because the case presents a federal question.

2 Defendant claims that a federal question exists because Defendant withheld the rent owed
3 due to Plaintiff discriminating against Defendant by violating the Fair Housing Act and 42 U.S.C.
4 § 3604(f)(3). (Not. of Removal ¶¶ 5-6.) The well-pleaded complaint rule, however, prevents the
5 Court from considering any additional claims, such that a defendant cannot create federal question
6 jurisdiction by adding claims or defenses to a notice of removal. *See Provincial Gov't of
7 Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083, 1086 (9th Cir. 2009); *see also McAtee v.
8 Capital One, F.S.B.*, 479 F.3d 1143, 1145 (9th Cir. 2007) (even previously asserted counterclaims
9 raising federal issue will not permit removal). Accordingly, Defendant's defense that his failure to
10 pay rent was warranted by federal statutes does not establish federal question jurisdiction in this
11 matter. *See Valles v. Castillo*, Case No. CV 14-9857 SJO (MRWx), 2015 U.S. Dist. LEXIS 8669,
12 at *4 (C.D. Cal. Jan. 26, 2015) ("Even if Defendants could raise a legally cognizable defense to
13 Plaintiff's unlawful detainer action under the Fair Housing Act or the Americans with Disabilities
14 Act, such a defense, as stated above, cannot convert a state-law claim into a federal one."); *U.S.
15 Bank Nat'l Ass'n v. Jaime*, Case No. CV 13-9457 UA (DUTYx), 2014 U.S. Dist. LEXIS 3259, at
16 *3 (rejecting the defendant's contention that there was federal question jurisdiction based on the
17 defendant withholding rent due to the plaintiff's alleged violations of the Fair Housing Act and 42
18 U.S.C. §3604(f)(3) because the "allegations regarding such violations may be raised as a defense
19 in the Unlawful Detainer Action. To invoke removal based upon federal question jurisdiction,
20 however, the federal issue or claim must arise in the underlying complaint the removal of which is
21 sought."). Thus, Defendant's contention that there are federal questions at issue in this litigation is
22 misplaced.¹

23 **IV. CONCLUSION**

24 For the reasons set forth above, the Court REASSIGNS this action to a district judge with

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26 ¹ Defendant would also not be able to remove based on diversity jurisdiction because under the
27 forum defendant rule, "a civil action otherwise removable solely on the basis of [diversity
28 jurisdiction] may not be removed if any of the parties in interest properly joined and served as
defendants is a citizen of the State in which such action is brought." 28 U.S.C. § 1441(b). Here,
Defendant is a citizen of California. Thus, the forum defendant rule applies, and the actions is not
removable on the basis of diversity jurisdiction.

1 the recommendation that the action be REMANDED to state court for further proceedings. The
2 Court GRANTS Defendant's request to proceed *in forma pauperis*. In light of the
3 recommendation that the case be remanded *sua sponte*, the Court recommends that the motion to
4 remand be denied as moot.

5 Any party may file objections to this report and recommendation with the district judge
6 within 14 days of being served with a copy. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); N.D.
7 Civil L.R. 72-3. The parties are advised that failure to file objections within the specified time
8 may waive the right to appeal the district court's order. *IBEW Local 595 Trust Funds v. ACS*
9 *Controls Corp.*, No. C-10-5568, 2011 WL 1496056, at *3 (N.D. Cal. Apr. 20, 2011).

10 IT IS SO RECOMMENDED.

11 Dated: December 17, 2018


12 KANDIS A. WESTMORE
13 United States Magistrate Judge